Taman Equine (M) Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri

HIGH COURT (KUALA LUMPUR) — CIVIL APPEAL NO WA-14-21–06 OF 2020
NOORIN BADARUDDIN J
25 OCTOBER 2021

Revenue Law — Income tax — case stated — Whether special commissioner of income tax ('SCIT') erred in deciding that payment made by appellant to obtain release of bumiputera quota was not deductible under s 33(1) of Income Tax Act 1967 ('ITA') — Whether SCIT erred in finding that director general of inland revenue was correct in imposing penalties under s 113(2) of ITA — Whether payment was incurred wholly and exclusively in the production of appellant's gross income — Whether payment was non-deductible under s 39(1) of ITA — Whether payment was penalty of fine — Whether appellant had acted in good faith — Income Tax Act 1967 ss 33(1), 39(1), 44(6), 113(2) & Schedule 5, para 34

The appellant was a property developer. The appellant had filed an appeal via case stated pursuant to para 34 of Schedule 5 of the Income Tax Act 1967 ('the ITA') against the decision of the special commissioners of income tax ('the SCIT') in the deciding order dated 27 September 2019 ('the DO'). Two issues were raised for the determination of the SCIT and in the DO the SCIT decided that: (a) the payments of RM322,342 for year of assessment ('YOA') 2011, RM3,349,271 for YOA 2012 and RM1,606,564 for YOA 2012, made by the appellant to Lembaga Perumahan dan Hartanah Selangor ('the LPHS') to obtain the release of bumiputera quota ('the payment') were not deductible under s 33(1) of the ITA; and (b) the director general of inland revenue ('the respondent') had correctly and reasonably imposed penalties under s 113(2) at the rate of 25% on the additional assessments raised for the YOA 2011, 2012 and 2013.

Held, allowing the appeal, and reversing the decision of the SCIT:

(1) In the present case, the appellant was required to sell a percentage of units in its commercial development project to bumiputera purchasers. An option was given by the Selangor State Government in that if the property developers were unable to sell bumiputera units to bumiputera purchasers and wanted to obtain a release of the said units, the property developers may opt to make a payment to LPHS ('the option'). The appellant exercised the option. It was clearly necessary and integral for the appellant to do so. It could not be disputed that: (a) the payment flowed

from the act forming the essence of the appellant's business and done for the purpose to earn revenue; and (b) without the payment being made, the appellant would not have been able to sell the bumiputera units to the non-bumiputera purchasers and generated its income. Therefore, it was obvious that the appellant's purpose or object behind the payment was to procure a benefit, which was purely a business purpose (see paras 16 & 19–20).

(2) The respondent's argument that the payment was not made wholly or exclusively in the production of income but just 'necessarily' for the production of income was misconceived. The agreed fact was that without making the payment, the bumiputera units could not be transferred. In view of the agreed facts, it was clear that the payment was deductible. Further, the payment was not of capital in nature as the appellant had all along, the right to sell. The payment was made to enable the appellant to widen its group or class of people it could sell to. The payment was therefore a normal business payment to produce income. Thus, the payment was wholly and exclusively incurred in the production of the appellant's gross income (see paras 21–23).

(3) The court agreed with the appellant that the units built by a property developer were part of its stock-in-trade. The bumiputera units therefore were stock-in-trade of the appellant's business. The appellant received income from the sale of the bumiputera units as the payment was made in order to sell the bumiputera units. In other words, the effect of the payment was to achieve sales relating to the appellant's stock-in-trade, which was revenue payment in character as opposed to a capital asset (see para 30).

(4) The payment even if it was seen and found by the SCIT to be not wholly and exclusively incurred in the production of gross income, the payment was still deductible under s 44(6) of the ITA which explicitly stated that any gift of money made in the basis year to a State Government or local authority was deductible for that year in arriving at the total income. The payment, being a contribution to the Government for each bumiputera unit released, could be seen as being a gift or contribution in nature (see para 31).

(5) Section 39(1) of the ITA provided for disallowance of the deduction of certain expenses. The SCIT had failed to appreciate that nowhere in s 39(1) of the ITA stipulated that the payment was non-deductible. Therefore, when there was no express provision stipulating that expenses such as the payment herein was non-deductible, it was trite, more so in the tax law, that one could only look at what was clearly stated in the ITA and nothing was to be read in nor implied. Further, the deductibility of a penalty or fine was also not curtailed by s 39(1) of the ITA. There was

also nothing in the ITA or any circulars which stated that deduction was disallowed on policy basis (see paras 32, 49 & 52).

(6) The SCIT erred in deciding that the payment was not deductible because it was a penalty or fine. The payment consisted of an amount equivalent to 10% of the bumiputera discount plus 5%. The 10% was not a penalty or fine and only the 5% was called a 'denda'. Even so, the appellant in the present appeal was not being punished for any offence or for any violation of law. The fact that the State Government provided a release of the bumiputera units meant that it was clearly within the law. Therefore, the 5% was not penal in nature because it was not a punishment. Further, the release of the bumiputera quota was based on LPHS's circular No 1 of 2011 ('the 2011 circular'). There was nothing in the 2011 circular which provided that the 5% or even the 10% as penalty. The SCIT had erred in considering the Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 3/2007 because it was an agreed fact that the applicable circular was the 2011 circular (see paras 35, 37, 39–40, 44 & 46).

(7) The appellant had acted in good faith and made full disclosure. This was not a case where the taxpayer had filed an incorrect return by omitting or understating its income or gave incorrect information relating matter affecting its chargeability to tax. The appellant had taken reasonable and genuine position in submitting its return. The court was of the view that the respondent would have known the deduction as the appellant had filed its tax returns and it could not be gainsaid that the deduction was only known after the audit was carried out on the appellant. In totality, the decision of the SCIT could not be sustained as it was wrong in law considering the clear statutory provisions that supported the fact that the payment was deductible. There were therefore merits in the present appeal (see paras 56–58).

[Bahasa Malaysia summary

Perayu adalah pemaju hartanah. Perayu telah memfailkan rayuan melalui kes dinyatakan menurut perenggan 34 Jadual 5 Akta Cukai Pendapatan 1967 ('ACP') terhadap keputusan pesuruhjaya khas cukai pendapatan ('PKCP') dalam perintah penentuan bertarikh 27 September 2019 ('PP'). Dua isu telah dibangkitkan untuk penentuan PKCP dan dalam PP tersebut PKCP memutuskan bahawa: (a) bayaran RM322,342 untuk tahun taksiran ('TT') 2011, RM3,349,271 untuk TT 2012 dan RM1,606,564 untuk TT 2012, yang dibuat oleh perayu kepada Lembaga Perumahan dan Hartanah Selangor ('LPHS') untuk mendapatkan pelepasan kuota bumiputera ('bayaran tersebut') tidak boleh ditolak di bawah s 33(1) ACP; dan (b) ketua pengarah hasil dalam negeri ('responden') telah mengenakan penalti dengan betul dan munasabah di bawah s 113(2) pada kadar 25% ke atas taksiran tambahan yang dibangkitkan untuk TT 2011, 2012 dan 2013.

Diputuskan, membenarkan rayuan dan mengubah keputusan PKCP:

(1) Dalam kes ini, perayu dikehendaki menjual beberapa peratus unit dalam projek pembangunan komersialnya kepada pembeli bumiputera. Pilihan telah diberikan oleh Kerajaan Negeri Selangor sekiranya pemaju hartanah tidak dapat menjual unit bumiputera kepada pembeli bumiputera dan ingin mendapatkan pelepasan unit tersebut, pemaju hartanah boleh memilih untuk membuat pembayaran kepada LPHS ('pilihan tersebut'). Perayu telah menggunakan pilihan tersebut. Ia jelas perlu dan penting bagi perayu untuk berbuat demikian. Ia tidak boleh dipertikaikan bahawa: (a) bayaran tersebut berpunca daripada perbuatan yang membentuk intipati perniagaan perayu dan dilakukan untuk tujuan memperoleh pendapatan; dan (b) tanpa membuat bayaran tersebut, perayu tidak akan dapat menjual unit bumiputera tersebut kepada pembeli bukan bumiputera dan menjana pendapatannya. Oleh itu, adalah jelas bahawa tujuan atau objek perayu di sebalik bayaran tersebut adalah untuk mendapatkan faedah, yang merupakan tujuan perniagaan semata-mata (lihat perenggan 16 & 19–20).

(2) Hujah responden bahawa bayaran tersebut tidak dibuat sepenuhnya atau secara eksklusif untuk penghasilan pendapatan tetapi hanya 'perlu' untuk penghasilan pendapatan adalah salah tanggap. Fakta yang dipersetujui ialah tanpa membuat bayaran tersebut, unit bumiputera tersebut tidak boleh dipindah milik. Mengambil kira fakta yang dipersetujui tersebut, adalah jelas bahawa bayaran tersebut boleh ditolak. Selanjutnya, bayaran tersebut bukan berbentuk modal kerana perayu mempunyai hak untuk menjual sejak awal lagi. Bayaran tersebut dibuat untuk membolehkan perayu meluaskan kumpulan atau kelas pembelinya. Oleh itu, bayaran tersebut adalah bayaran perniagaan biasa untuk menghasilkan pendapatan. Oleh yang demikian, bayaran tersebut telah dibelanjakan sepenuhnya dan secara eksklusif dalam penghasilan pendapatan kasar perayu (lihat perenggan 21–23).

(3) Mahkamah bersetuju dengan perayu bahawa unit yang dibina oleh pemaju hartanah adalah sebahagian daripada stok dalam dagangannya. Oleh itu, unit bumiputera tersebut adalah stok dalam dagangan perniagaan perayu. Perayu menerima pendapatan daripada penjualan unit bumiputera tersebut kerana bayaran tersebut dibuat untuk menjual unit bumiputera. Dalam erti kata lain, kesan bayaran tersebut adalah untuk mencapai jualan yang berkaitan dengan stok dalam dagangan perayu, yang pada sifatnya merupakan bayaran hasil dan bukan aset modal (lihat perenggan 30).

(4) Walaupun PKCP menganggap dan mendapati bayaran tersebut tidak sepenuhnya dan secara eksklusif dibelanjakan dalam penghasilan pendapatan kasar, bayaran tersebut masih boleh ditolak di bawah s 44(6) ACP yang menyatakan secara jelas bahawa apa-apa hadiah berbentuk

wang dibuat dalam tahun asas kepada Kerajaan Negeri atau pihak berkuasa tempatan boleh ditolak untuk tahun tersebut dalam mencapai jumlah keseluruhan pendapatan. Bayaran tersebut, sebagai sumbangan kepada Kerajaan bagi setiap unit bumiputera yang dilepaskan, boleh dilihat sebagai bersifat pemberian atau sumbangan (lihat perenggan 31).

(5) Seksyen 39(1) ACP memperuntukkan penolakan potongan perbelanjaan yang tertentu. PKCP telah gagal untuk memahami bahawa tiada apa-apa dalam s 39(1) ACP menetapkan bahawa bayaran tersebut tidak boleh ditolak. Oleh itu, apabila tiada peruntukan nyata yang menyatakan bahawa perbelanjaan seperti bayaran tersebut adalah tidak boleh ditolak, adalah undang-undang yang mantap, lebih-lebih lagi dalam undang-undang cukai, bahawa seseorang hanya boleh melihat apa yang dinyatakan dengan jelas dalam ACP dan tiada apa yang perlu dibaca bersama mahupun yang tersirat. Selanjutnya, pemotongan penalti atau denda juga tidak dinyatakan dalam s 39(1) ACP. Tiada juga apa-apa dalam ACP atau mana-mana pekeliling yang menyatakan bahawa pemotongan tidak dibenarkan berdasarkan polisi (lihat perenggan 32, 49 & 52).

(6) PKCP terkhilaf dalam memutuskan bahawa bayaran tersebut tidak boleh ditolak kerana ia adalah penalti atau denda. Bayaran tersebut terdiri daripada jumlah bersamaan dengan 10% daripada diskaun bumiputera ditambah 5%. 10% tersebut bukan penalti atau denda dan hanya 5% tersebut yang dipanggil 'denda'. Walaupun begitu, perayu dalam rayuan semasa tidak dihukum atas apa-apa kesalahan atau apa-apa pelanggaran undang-undang. Hakikat bahawa Kerajaan Negeri menyediakan pelepasan unit bumiputera bermakna ia jelas termaktub dalam undang-undang. Oleh itu, 5% tersebut tidak bersifat penal kerana ia bukan satu hukuman. Selanjutnya, pelepasan kuota bumiputera adalah berdasarkan pekeliling LPHS Bilangan 1 Tahun 2011 ('pekeliling 2011'). Tidak ada apa-apa dalam pekeliling 2011 yang memperuntukkan bahawa 5% atau 10% tersebut sebagai penalti. PKCP telah terkhilaf apabila mempertimbangkan Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 3/2007 kerana ia adalah fakta yang dipersetujui bahawa pekeliling yang terpakai ialah pekeliling 2011 (lihat perenggan 35, 37, 39–40, 44 & 46).

(7) Perayu telah bertindak dengan suci hati dan membuat pendedahan penuh. Ini bukan kes di mana pembayar cukai telah memfailkan penyata cukai yang salah dengan mengetepikan atau mengurangkan pendapatannya atau memberikan maklumat yang salah berkaitan perkara yang menjejaskan pengenaan cukai terhadapnya. Perayu telah mengambil pendirian yang munasabah dan jujur dalam mengemukakan penyata cukainya. Mahkamah berpendapat bahawa responden sepatutnya akan mengetahui tentang pemotongan tersebut kerana

perayu telah memfailkan penyata cukainya dan tidak boleh dinafikan bahawa pemotongan tersebut hanya diketahui selepas audit dijalankan ke atas perayu. Secara keseluruhannya, keputusan PKCP tidak dapat dikekalkan kerana ia adalah salah di sisi undang-undang mengambil kira peruntukan undang-undang yang jelas yang menyokong fakta bahawa bayaran tersebut boleh ditolak. Oleh itu, terdapat merit dalam rayuan ini (lihat perenggan 56–58).]

Cases referred to

British Columbia Ltd v Canada [1999] 3 SCR 804, FC (refd)
British Insulated and Helsby Cables Ltd v Atherton [1926] AC 205, HL (refd)
Director-General of Inland Revenue v Kulim Rubber Plantations Ltd [1981] 1 MLJ 214, FC (refd)
Director-General of Inland Revenue v LTS [1974] 1 MLJ 187; [1985] MTC 166 (refd)
Exxon Chemical (M) Sdn Bhd v Ketua Pengarah Dalam Negeri [2006] 1 MLJ 428; [2005] 4 CLJ 810, CA (refd)
Inland Revenue v Carron Company 1968 SC (HL) 47, HL (refd)
Inland Revenue Commissioners v Wesleyan and General Assurance Society [1946] 2 All ER 749, CA (refd)
Income Tax Officer v Ramesh Stone Wares (1998) 62 TTJ ASR 93 (refd)
Ketua Pengarah Hasil Dalam Negeri v Firgos (Malaysia) Sdn Bhd [2014] 1 MLJ 701; [2014] 8 CLJ 943, HC (refd)
Ketua Pengarah Hasil Dalam Negeri v Kim Thye & Co [1992] 2 MLJ 708; [1992] 1 CLJ Rep 135, SC (refd)
L Sdn Bhd v Comptroller General of Inland Revenue [1973] 1 MLJ 57 (refd)
Lift & Shift India P Ltd, Mumbai v Cit Cen-Iv, Mumbai (ITA Nos 5606/Mum/2015 and 4521/Mum/2016) (unreported) (refd)
National Land Finance Co-Operative Society Ltd v Director General of Inland Revenue [1994] 1 MLJ 99; [1993] 4 CLJ 339, SC (refd)
Prima Nova Harta Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri (Appeal No WA-14-7–12 of 2019) (unreported), HC (refd)
Sovereign Teamwork (M) Sdn Bhd v Director General of Inland Revenue (Case No WA-14-1–01 of 2020) (unreported), HC (refd)
The Cape Brandy Syndicate v The Commissioners of Inland Revenue [1921] 2 KB 403; 12 TC 358, HC (refd)
The Commissioner of Inland Revenue v EC Warnes & Co Ltd [1919] 2 KB 444 (refd)

Legislation referred to

Income Tax Act 1967 ss 33, 33(1), 39(1) 44(6), 113(2), Schedule 5, para 34
Income Tax Act [CA] ss 9(1), 18(1)(a)
Motor Vehicles Act 1988 [IN]

Vijey M Krishnan (William Wong with him) (Raja, Darryl & Loh) for the appellant.
Muazmir bin Mohd Yusof Ahmad (Ahmad Isyak bin Mohd Hassan and Nordiana Sham) (Revenue Counsel) for the respondent.

Noorin Badaruddin J:

[1] This is an appeal made by way of case stated pursuant to para 34 of Schedule 5 of the Income Tax Act 1967 ('the ITA') against the whole of the decision of the Special Commissioners of Income Tax ('SCIT'), as contained in the deciding order ('DO') dated 27 September 2019.

[2] Two issues were raised for the determination of the SCIT and in its DO, the SCIT had decided that:

(a) the following payments made by the appellant to Lembaga Perumahan dan Hartanah Selangor ('LPHS') to obtain the release of bumiputera quota ('payment') are not deductible under s 33(1) of the ITA:

ii. Year of Assessment	Payment (RM)
2011	322,342
2012	3,349,271
2013	1,606,564

(b) the respondent had correctly and reasonably imposed penalties under s 113(2) at the rate of 25% on the additional assessments raised for the years of assessment 2011, 2012 and 2013.

FACTS

[3] The appellant is principally engaged in property development.

[4] The appellant was required by the Selangor State Government to sell a percentage of units in the appellant's Equine Boulevard commercial project to bumiputera purchasers. As an option, an application can be made to release the bumiputera units that cannot be sold to non-bumiputera purchasers and in turn a payment is required to be made to LPHS.

[5] A number of the bumiputera units in the appellant's Equine Boulevard commercial project could not be sold. The appellant made the payment to LPHS for the release of the bumiputera units that could not be sold and claimed the payment as business expenses. The appellant further took deduction for the payment in question and the income arising from the project has also been brought to tax.

[6] The respondent conducted an audit in the appellant's premises on 7 September 2015 and on 21 June 2016 it raised the issue of the deductions taken by the appellant for the payment in question. The respondent stated that the deductions are not allowed under s 33(1) of the ITA as they are said to be capital in nature. The respondent was of the view that the payment are made to cancel the quota rights allocated to bumiputera and subsequently to obtain rights to sell to non-bumiputera.

[7] The appellant then responded and gave reasons as to why the payment cannot be said to be capital in nature and that they are revenue expenditure wholly and exclusively incurred for the relevant year of assessments by the appellant in the production of its gross income under s 33(1) of the ITA via letters dated 8 and 20 July 2016. In addition, a meeting was also held and took place between the appellant's tax agent and the respondent on 13 July 2016.

[8] The respondent had maintained its decision and disallowed the appellant's claim for the deduction.

SUMMARY OF THE APPELLANT'S CONTENTIONS

[9] It is the appellant's contention that the case stated discloses errors of law and facts. It is argued that from the facts, clear and express provisions for deduction and case law authorities, the payment has met the test for deduction. In essence, the appellant relied on s 33(1) of the ITA and the decision of the High Court in *Prima Nova Harta Development Sdn Bhd v Ketua Pengarah Hasil Dalam Negeri* (Appeal No WA-14-7–12 of 2019) (unreported) ('Prima Nova Harta')

[10] It is further argued that:

(a) if the payment is not deductible under s 33(1) of the ITA, the payment would be deductible under s 44(6) of the ITA which explicitly provides that any gift of money made in the basis year to a State Government or local authority is deductible for that year in arriving at the total income, as the payment constitutes a gift under s 44(6) of the ITA; and

(b) the payment is not stipulated as non-deductible under s 39(1) of the ITA which expressly provides for the disallowance of the deduction of certain expenses.

SUMMARY OF THE RESPONDENT'S CONTENTIONS

[11] Summarily, it is the respondent's contention that the nature of the expenses incurred is for the purpose to get the permission of the state authority to enable the reserved quota for the bumiputera to be released so that the

appellant can sell it to the non-bumiputera. Thus, the payment is argued to be capital in nature and the payment was not incurred wholly and exclusively in the production of income as stipulated in s 33 of the ITA.

[12] The respondent submits that there is condition precedent before the sale of the units takes place to the non-bumiputera. The payment to the state authority is said to be capital expenditure in nature as it was paid to obtain the permission for the appellant's production of income.

[13] The respondent added that the expenses being not made wholly and exclusively in the production of income was incurred after the completion of the said project and such expenditure does not form part of the development cost of the project.

FINDINGS

[14] It is trite law that in order to qualify for deduction under s 33(1) of the ITA, the expenditure must be wholly and exclusively incurred in the production of the tax payer's gross income. Section 33(1) of the ITA states that:

> 33 Adjusted income generally
>
> (1) Subject to this Act, the adjusted income of a person from a source for the basis period for a year of assessment shall be an amount ascertained by deducting from the gross income of that person from that source for that period all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source, including ...

[15] The question whether a particular payment is capital or revenue is basically a question of fact and every case must be considered on its own facts (see *Director-General of Inland Revenue v Kulim Rubber Plantations Ltd* [1981] 1 MLJ 214).

[16] It cannot be disputed that in this case, without the payment being made, the appellant would not have been able to sell the bumiputera units to the non-bumiputera purchasers and generate its income.

[17] The SCIT had relied on its earlier decision in *Prima Nova Harta*. However, the said decision has been overturned by the High Court. The High Court in *Prima Nova* and later in another case *Sovereign Teamwork (M) Sdn Bhd v Director General of Inland Revenue* (Case No WA-14-1–01 of 2020) (unreported) had held that contributions made to the State Government for the release of the bumiputera status is deductible under s 33(1) of the ITA. The court was of the view that by selling the bumiputera lots to non-bumiputera, it directly generates the taxpayer's income. However, to be able to do so, the applicant therein needs to return the bumiputera discount to the State

Government. As such the High Court was of the view that the expenses or payment made by the applicant therein are 'wholly and exclusively' borne for the purpose of generating income as well as being closely related to the business of the applicant. Thus, such expenses should be made deductible under s 33(1) of the ITA.

[18] The scenario in *Prima Nova* is similar to the present case as the appellant herein is required to make the payment to the State Government via the LHPS for the bumiputera units to be sold to the non-bumiputera. The payment is therefore directly related, incidental and relevant to the appellant's principal activity in its entirety as property developer.

[19] The appellant was required to sell a percentage of units in its Equine Boulevard commercial project to bumiputera purchasers (see the letter from Pejabat Tanah dan Galian dated 15 February 1999 in p 198 of R/P 2). An option is given by the Selangor State Government in that if property developers are unable to sell bumiputera units to bumiputera purchasers and wish to obtain a release of the said units, the property developers may opt to make a payment to LPHS (see paras 4.2 and 6.2 of the Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 1 Tahun 2011).

[20] The appellant, being unable to sell the bumiputera units, opted to obtain the release of the units to sell to non-bumiputera purchasers. It is clearly necessary and integral for the appellant to do so and it cannot be disputed that the payment flowed from the act forming the essence of the appellant's business and done for the purpose to earn revenue. The payment is therefore unavoidable for otherwise the appellant will not be able to generate its income. So it is obvious that the appellant's purpose or object behind the payment is to procure a benefit, which is purely a business one.

[21] The respondent argued that the payment was made to obtain permission for the appellant's production of income and that the payment was made to comply with conditions imposed by the State Government whom will allocate certain percentage in order to enable the appellant to effectively generate income. It is contended that the payment was not made wholly or exclusively in the production of income but just 'necessarily' for the production of income.

[22] The respondent's argument is misconceived. The agreed fact is that without making the payment the bumiputera units cannot be transferred. Looking at the agreed facts and the dicta in *Prima Nova*, it is clear that the payment is deductible.

[23] Further, it is of the considered view that the payment is not of capital in nature as the appellant has all along, the right to sell. The payment was made so as to enable the appellant to widen its group or class of people it can sell to. The payment was therefore a normal business payment in order to produce income. The payment was therefore wholly and exclusively incurred in the production of the appellant's gross income.

[24] In *British Insulated and Helsby Cables Ltd v Atherton* [1926] AC 205 at p 212 of the report, Viscount Cave LC of the House of Lords had stated as follows:

> It was made clear in the above cited cases of *Usher's Wiltshire Brewery v Bruce* (1) and *Smith v Incorporated Council of Law Reporting for England and Wales* (2) *that a sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the grounds of commercial expediency, and in order indirectly to facilitate the carrying on of the business, may yet be expended wholly and exclusively for the purposes of the trade*. (Emphasis added.)

[25] Since there is no definition of capital or revenue expenditure in the ITA, what is capital and revenue expenditure will depend on the facts of each case. Several cases which have recognised that a payment made to remove an obstacle to profitable trading is attributable to revenue are forwarded to this court.

[26] In the case of *Inland Revenue v Carron Company* 1968 SC (HL) 47, the taxpayer was incorporated by royal charter. The charter seriously impeded the profitable development of the company's business because it limited the company's borrowing powers and also restrictions on share transfers made it difficult to attract executives of a suitable calibre. The company decided to seek a supplementary charter to eliminate these impediment but some dissenting shareholders took legal action to indefinitely delay the matter. Eventually a settlement was negotiated, and the company paid £88,000 to the dissenting shareholders and £3,107 to obtain the supplementary charter. The House of Lords held that an allowable deduction was available for both these items as that money was spent to remove restrictions that prevented profits from being earned. The House of Lords was of the view that there was no creation of new assets. The removal of the disadvantages by the supplementary charter enabled the company's business to be carried on more efficiently and in its day-to-day trading and therefore the advantage obtained was an income advantage.

[27] In the case of *Kulim Rubber Plantations Ltd*, the tax payer owned extensive rubber plantations. It decided on a new policy by embarking on a large scale programme of oil-palm planting. To implement this policy and to raise funds it decided on selling the more outlying and less profitable rubber estates. The taxpayer had also employed agents and secretaries in the conduct of its business and had agreed that in the event of the sale of the whole or part of

the estates, they would be entitled to compensation. The Federal Court held that where a company, in order to get rid of a contract which is of an onerous character or a servant whose continuance in service is undesirable in the company's interest, makes a payment in such circumstances it is properly to be treated as a revenue payment and a deductible expense.

[28] The case such as the *Carron Company* and *Kulim Rubber Plantations* Ltd highlighted to this court demonstrate that a payment made to remove an obstacle to profitable trading is deductible as there is no new asset created or enduring benefit (enduring benefit is attributed to capital as per the House of Lords in *British Insulated and Helsby Cables Ltd* that has been acquired and is attributable to revenue). The House of Lords further stated:

> Of course they obtained an advantage: *companies do not spend money either on capital or income account unless they expect to obtain an advantage. And money spent on income account, for example on durable repairs, may often yield an enduring advantage*. In a case of this kind *what matters is the nature of the advantage for which the money was spent. This money was spent to remove antiquated restrictions which were preventing profits from being earned. It created no new asset. It did not even open new fields of trading which had previously been closed to the company. Its true purpose was to facilitate trading by enabling the company to engage a more competent manager and to borrow money required to finance the company's traditional trading operations under modern conditions*. (Emphasis added.)

[29] In *L Sdn Bhd v Comptroller General of Inland Revenue* [1973] 1 MLJ 57 at p 58 the court explained that if an expenditure relates to fixed capital (ie fixed assets), it may be regarded as capital expenditure. If an expenditure relates to circulating capital (ie stock-in-trade), it will be deductible.

[30] The appellant argued that in so far as the fixed capital versus circulating capital test is concerned, the same type of asset may be either a fixed asset or stock-in-trade according to the nature of the business. What is a capital asset in the hands of one person, may be a trading asset in the hands of another, and the nature of a receipt may consequently vary according to the nature of the trade in connection with which it arises. This court agrees with the appellant's contention that the units that a property developer builds is part of its stock-in-trade. The bumiputera units therefore were the stock-in-trade of the appellant's business. The appellant receives income from the sale of the bumiputera units as the payment was made in order to sell the bumiputera units. In other words, the effect of the payment was to achieve sales relating to the appellant's stock-in-trade, which is revenue payment in character as oppose to a capital asset.

[31] This court further agrees with the appellant that the payment even if it is seen and found by the SCIT to be not wholly and exclusively incurred in the

production of gross income, the payment is deductible under s 44(6) of the ITA which explicitly provides that any gift of money made in the basis year to a State Government or local authority is deductible for that year in arriving at the total income. The payment constitutes a gift under s 44(6) of the ITA. The payment, being a contribution to the Government for each bumiputera unit released, can be seen as being a gift or contribution in nature. Section 44(6) of the ITA provides:

> 44(6) Subject to subsection (12), there shall be deducted pursuant to this subsection from the aggregate income of a person for the relevant year reduced by any deduction falling to be made for that year in accordance with subsection (1) an amount equal to any gift of money made by him in the basis year for that year to the Government, a State Government, a local authority or an institution or organization approved for the purposes of this section by the Director General on the application of the institution or organization concerned:
>
> Provided that the amount to be deducted from the aggregate income of a company for the relevant year in respect of any gift of money made by that company to any institution or organization approved for the purposes of this section by the Director General shall not exceed five per cent bf the aggregate income of the company in the relevant year.

[32] This court is of the further considered view that the SCIT had failed to appreciate that nowhere in s 39(1) of the ITA stipulates that the payment is non-deductible. Section 39(1) provides for the disallowance of the deduction of certain expenses. Therefore, when there is no express provision stipulating that expenses such as the payment herein is non-deductible, it is trite, more so in tax law, that one can only look at what is clearly stated in the Act and nothing is to be read in nor implied.

[33] In *National Land Finance Co-Operative Society Ltd v Director General of Inland Revenue* [1994] 1 MLJ 99 at p 106; [1993] 4 CLJ 339 at p 344, the Supreme Court in quoting the principle of strict interpretation in *The Cape Brandy Syndicate v The Commissioners of Inland Revenue* [1921] 2 KB 403; 12 TC 358 stated as follows:

> There are ample authorities to show that courts have refused to adopt a construction of a taxing Act which would impose liability when doubt exists. In *Re Micklewait* [1855] 11 Exch 452 it was held that a subject was not to be taxed without clear words. We realise that revenue from taxation is essential to enable Government to administer the country and that the courts should help in the collection of taxes whilst remaining fair to tax payers. Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J in *The Cape Brandy Syndicate v The Commissioners of Inland Revenue*:
>
> > ... in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

[34] In *Exxon Chemical (M) Sdn Bhd v Ketua Pengarah Dalam Negeri* [2006] 1 MLJ 428; [2005] 4 CLJ 810 the Court of Appeal through the judgment of Gopal Sri Ram JCA (as he then was) stated that:

> The maxim in revenue law is this: no clear provision; no tax. If there is any doubt then it must be resolved in the taxpayer's favour. See, *National Land Finance Co-Operative Society Ltd v Director General of Inland Revenue* [1994] 1 MLJ 99; [1993] 4 CLJ 339. The corollary of that proposition is that those parts in a revenue statute that favour the taxpayer must be read liberally. What learned counsel for revenue is asking us to do is to go the other way. That would be standing the true principle on its head.

[35] Apart from failing to properly direct their minds to the facts and the provisions of ss 33(1), 44(6) and 39(1) of the ITA, the SCIT further erred in making a finding that the payment is not deductible as it is a penalty or fine.

[36] The SCIT in its case stated at para 10.28 states that:

> 10.28 Sepertimana kami putuskan dalam Rayuan Prima Nova Harta Development Sdn Bhd, oleh kerana jumlah dibayar adalah merupakan bayaran penalti atau denda maka bayaran tersebut bukanlah perbelanjaan kesemuanya dan semata-mata dibelanjakan dalam menghasilkan pendapatan kasar Perayu dan tidak boleh dibenarkan tolakan dibawah subseksyen 33(1) ACP 1967. Kami merujuk kepada kes *The Commissioner of Inland Revenue v EG Warnes & Co Ltd* (12 TC 227) yang memutuskan seperti berikut:
>
> > ... penalty was not a loss connected with and arising out of the Taxpayer's trade, hence, not deductible. Penalty or fine is not tax deductible as it is imposed upon a trader personally for a breach of law. Breaking the law cannot be considered to be trading transaction.

[37] The payment consists of an amount equivalent to 10% of the bumiputera discount plus 5%. The 10% is not a penalty or fine. Only the 5% is called a 'denda'. The SCIT have stated as such. The SCIT at para 10.14 of the case stated as follows:

> 10.14 Berdasarkan perenggan 3 surat PTGS bertarikh 28.10.2010 tersebut, Perayu telah dikenakan syarat bayaran batik potongan harga bumiputera sebanyak 10% dan denda langgar syarat kuota 5%, pembayaran ini tidak terdapat di mana-mana perenggan dalam Pekeliling LPHS Bil 1/2011 tersebut.

[38] The respondent in their written submission dated 7 August 2019 at para 17 had also stated to the same effect as follows:

> 17. The respondent would like to highlight that the payments made to LPHS were consisted of:
>
> i. the refund of 10% for the bumiputera quota; and

ii. penalty of 5% for violating the terms of the quota to the State Government through LPHS.

[39] Therefore, it cannot be said that the 10% is a penalty or fine. In fact this court is of the considered view that even the 5%, is not a penalty or fine.

[40] In *Black's Law Dictionary*, 'penalty' is defined as 'a punishment imposed by statute as a consequence of the commission of an offence'. In the instant matter, the appellant is not being punished for any offence or for any violation of law. The payment was made in order for the appellant to sell the bumiputera units or that the units can be released to some other non-bumiputera purchasers. The SCIT had made a fact finding that the appellant has not released the bumiputera units before the approval was obtained. The SCIT stated at para 10.24 of the case stated that 'tiada fakta dikemukakan bagi menunjukkan perayu telah membuat jualan sebelum kelulusan diberikan'. As such, there was no violation of the law committed by the appellant. The fact that the State Government provides a release of the bumiputera units means that it is clearly within the law. As such the 5% is therefore not penal in nature because it is not a punishment.

[41] In the case of *Income Tax Officer v Ramesh Stone Wares* (1998) 62 TTJ ASR 93, the appellant therein made a claim on account of penal freight paid to the railway department. The appellant explained to the assessing officer that freight is originally charged by the railway department on coal keeping in view of the capacity of the wagon. The coal is weighed later on by the railway authorities and excess of the weight from the actually charged weight is liable for payment of freight as well as penal freight. The appellant therein pleaded that they have no control on the despatch of the coal by the coal company who are loading the coal in accordance with their own procedure and according to their own system. The matter was adjudicated upon the commissioner (appeals) who has given his findings inter alia that all the details of the freight charged lead to the conclusion that penal freight has been charged not for unlawful activity but on account of overloading of wagons over which the appellant had no control whatsoever. The Amritsar Income Tax appellant Tribunal found as follows:

> 4. The issue is to be decided from two angles. The first angle is whether the expenditure debited is penal in nature. We are of the opinion that the expenditure is not penal in nature because it is not the infringement of law but same is violation of contract that too not by the appellant but by his agent ie the Coal Authority of India. In terms of agreement, if coal is finally found by the Railway authorities to be overloaded then the appellant has to pay additional freight charges which according to the terminology of the contract is called as penalty freight.

[42] In the case of *Lift & Shift India P Ltd, Mumbai v Cit Cen-Iv,*

Mumbai (ITA Nos 5606/Mum/2015 and 4521/Mum/2016) (unreported), the assessee paid certain sums of money towards compounding fees paid for transportation of lifts oversized and overweight as per the permissible limit under the Motor Vehicles Act 1988. The Mumbai Income Tax Tribunal held as follows:

> We find that this compounding fee was not in violation of law but an option is given to assessee to pay compounding fee for transportation of over dimensional consignment generally termed as overloading charges.

[43] It can be understood from the cases cited in the above that the nature of the payment made or expenses incurred by the tax payer must be looked into in determining whether it is deductible. In *Inland Revenue Commissioners v Wesleyan and General Assurance Society* [1946] 2 All ER 749, the English Court of Appeal had held that in construing a document for tax purposes a strained or forced construction is not to be placed on it either to attract or to avoid tax. Lord Greene MR in that case explained as follows:

> There have been cases in the past where what has been called 'the substance of the transaction' has been thought to enable the court to construe a document in such a way as to attract tax. That doctrine was, I hope, finally exploded by the decision of the House of Lords in *Inland Revenue Comrs v Westminster (Duke)* (1). The argument of the Crown in the present case, when really understood, appears to me to be an attempt to resurrect it. The doctrine means no more than that the language that the parties use is not necessarily to be adopted as conclusive proof of what the legal relationship is. That is, indeed, a common principle of construction.

[44] The release of the bumiputera quota was based on the Pekeliling Lembaga Perumahan dan Hartanah Selangor Bil 1 Tahun 2011 ('2011 Circular'). It is pertinent to note that nowhere in the 2011 Circular that states the 5% (or even the 10%) as penalty. The 2011 Circular only talks about a 20% penalty for every bumiputera unit sold based on an inaccurate report (see para 6.3 of the 2011 Circular).

[45] However, in the case stated the SCIT decided that the 2011 Circular was not applicable but instead it is the Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 3/2007 ('2007 Circular'). According to the SCIT based on their experience that was the Circular that they have referred to when the Majlis Mesyuarat Kerajaan Negeri (MMKN) decided on the determination of the bumiputera quota in the execution of the state land development on 6 October 2010. The SCIT stated as follows:

> 10.10 Kami telah meneliti keseluruhan keterangan dan dokumen yang dikemukakan oleh kedua-dua belah pihak dan mendapati Pekeliling Lembaga Perumahan dan Hartanah Selangor Bilangan 1 Tahun 2011 (Pekeliling LPHS

Bil.1/2011) yang dilampirkan dalam eksibit C1 di muka surat 21–31 adalah tidak berkaitan dengan Rayuan ini dan tidak membantu kami dalam membuat keputusan kami.

10.11 lni kerana berdasarkan Perenggan 1, Pekeliling LPHS Bil.1/2011 ini disediakan berikutan keputusan MMKN pada 10.8.2011 dan berdasarkan Perenggan 7 pula, Pekeliling ini berkuat kuasa mulai 15.9.2011.

10.12 Manakala, dalam Rayuan ini, merujuk kepada surat PTGS dalam eskibit C2 di muka surat 10–11 yang memaklumkan keputusan MMKN Selangor pada 6.10.2010 yang meluluskan rayuan Perayu bagi pelepasan koutajualan bumiputera adalah bertarikh 28.10.2010.

10.13 lni jelas menunjukkan Pekeliling LPHS Bil.1/2011 tidak berkaitan kerana pada ketika keputusan MMKN dibuat pada 6.10.2010 dan surat PTGS dikeluarkan pada 28.10.2010, Pekeliling LPHS Bil 112011 tidak lagi wujud dan berkuat kuasa.

10.14 Berdasarkan perenggan 3 surat PTGS bertarikh 28.10.2010 tersebut, Perayu telah dikenakan syarat bayaran balik potongan harga bumiputera sebanyak 10% dan denda langgar syarat kuota 5% pembayaran ini tidak terdapat di mana-mana perenggan dalam Pekeliling LPHS Bil. 1/2011 tersebut.

10.15 Daripada pengalaman kami Pekeliling yang berkaitan adalah Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 3/2007 (Pekeliling PTGS Bil 3/2007) berkenaan 'Penetapan Kuota bumiputera Dalam Perlaksanaan Pembangunan Tanah dan Lain-lain Perkara yang Berkaitan dengan Kuota bumiputera'. Pekeliling inilah yang menjadi rujukan kami kerana inilah Pekeliling yang berkuasa pada ketika MMKN membuat keputusan pada 6.10.2010. Memandangkan Pekeliling ini tidak dilampirkan dalam mana-mana lkatan Dokumen, kami lampirkan Pekeliling ini sebagai Eksibit D untuk menjadi rujukan sekiranya ada rayuan lanjut oleh mana-mana pihak yang tidak berpuas hati dengan keputusan kami. Merujuk kepada Perenggan 4.2 Pekeliling yang menyatakan bahawa perlaksanaan arahan dalam Pekeliling ini berkuat kuasa mulai 30.5.2007.

[46] It is of the considered view that the SCIT has erred in taking into account the 2007 Circular for it was an agreed fact that the applicable circular is the 2011 Circular (see para 4 of the statement of agreed facts). Therefore the 2007 Circular is irrelevant to the present matter. The SCIT cannot on its own accord take into consideration the 2007 Circular as it had not been referred to them by the parties. The SCIT cannot devise their own test for deduction. In any event, both the 2011 Circular and the 2007 Circular are not law and the payment imposed on the appellant for the release of the bumiputera units cannot be said to be a penalty in the sense of it being a punishment. The payment is incidental to the appellant's business and as such it is deductible.

[47] The case of *British Columbia Ltd v Canada* [1999] 3 SCR 804 is highlighted to this court. In that case, the central question in the appeal was whether the over-quota levy may be deducted as a business expense from a taxpayer's business income. The appellant therein carried on a poultry farm

business in British Columbia. It was a registered egg producer and, due to local market conditions, it decided to produce over-quota from 1984 to 1988. In 1988, an inspector from the BC Egg Marketing Board discovered the over-quota layers on the appellant's farm and the appellant paid an over-quota levy of approximately $270,000. When filing its returns under the Income Tax Act, the appellant included the profit from its over-quota production in its income. In 1988, the appellant deducted the over-quota levy as a business expense pursuant to ss 9(1) and 18(1)(a) of the Act, which resulted in a non-capital loss that was carried back to its 1985 taxation year. In its 1989 taxation year, the appellant deducted the interest paid on the unpaid balance of the levy and legal expenses incurred for representation in respect of the over-quota levy. Upon reassessment of its 1985, 1988, and 1989 tax returns, the Minister of National Revenue disallowed the deductions of the over-quota levy. In allowing the appeal of the appellant, the Supreme Court of Canada held that:

> The over-quota levy is an allowable deduction pursuant to ss 9(1) and 18(1)(a). The levy was incurred as part of the appellant's day-to-day operations, and the decision to produce over-quota was a business decision made in order to realize income. The characterization of the levy as a 'fine or penalty' is of no consequence because the income tax system does not distinguish among levies, fines and penalties.

[48] In *British Columbia Ltd v Canada* the Supreme Court further stated that since the Act therein is not silent on the issue of restricting the deduction of some expenses incurred for the purpose of gaining income, there is a strong indication that Parliament did direct its attention to the question and that where it wished to limit the deduction of expenses or payments of fines and penalties, it did so expressly. The court held as follows:

> 65 Moreover, given that Parliament has expressly turned its mind to the deduction of expenses associated with certain activities that are offences under the Criminal Code, outlined in s 67.5 of the Act, I do not find a legitimate role for judicial amendment on the general question of deductibility of fines and penalties. Since the Act is not silent on the issue of restricting the deduction of some expenses incurred for the purpose of gaining income, this is a strong indication that Parliament did direct its attention to the question and that [p 841] where it wished to limit the deduction of expenses or payments of fines and penalties, it did so expressly. I am also sceptical that the deduction of fines and penalties provides the taxpayer with a 'benefit' or 'profit' — indeed, their purpose is to calculate the taxpayer's profit, which is then taxed.

[49] In the instant matter, the deductibility of a penalty or fine is also not curtailed by s 39(1) of the ITA. Parliament has expressly disallowed the deduction of certain expenses under s 39(1). If Parliament had wished to limit the deduction of a penalty or fine, Parliament would have done so expressly.

[50] The SCIT have also misdirected themselves, and erred in law and in

fact, in relying on the case of *The Commissioner of Inland Revenue v EC Warnes & Co Ltd* [1919] 2 KB 444. In that case, the taxpayer paid a penalty of £2,000 after being sued on information by the Attorney General for breach of certain orders and proclamations. As such that case is not applicable to the present matter. In this appeal, the payment was made to enable the appellant to obtain approval to sell the bumiputera units to non-bumiputera purchasers. No offence or wrong doing was committed by the appellant and at the risk of repetition, the payment cannot be said to be a fine or penalty.

[51] This court further finds that the SCIT had erred in their views when they stated that the appellant already received a reward or return when given the bumiputera quota release, namely, the appellant was able to sell to non-bumiputera at full price without discount. The SCIT stated that if the appellant were allowed to make a claim for deduction, the appellant would profit many times over, via the sale of the bumiputera units without discount, and a reduction in chargeable income (see paras 10.32 and 10.33 of the case stated). However, the fact remain that s 39(1) of the ITA expressly excluded the deduction of certain expenses. Further, the payment made by the appellant was necessarily incidental and relevant to gaining or producing income and expenditure and is not disqualified from deduction as it involves the attainment of profit.

[52] The SCIT further erred when they stated that in terms of public interest, the appellant is not entitled to make a claim for deduction because if it is allowed, it would encourage property developers to avoid selling bumiputera units to bumiputera and leave the Government alone to address the racial imbalance problem in areas dominated by certain races (see para 10.34 of the case stated). As stated earlier, the SCIT cannot devised their own test for deduction as there is s 39(1) of the ITA where Parliament expressly excluded the deduction of certain expenses and nowhere in the ITA or any Circulars for that matter that deduction is disallowed on policy basis. In *British Columbia Ltd v Canada*, the court had stated:

> This is not an endorsement of a literalist approach to statutory interpretation, but a recognition that in applying the principle of interpretation to the Act, attention must be paid to the fact that the Act is one of the most detailed, complex, and comprehensive statutes in our legislative inventory and courts should be reluctant to embrace unexpressed notions of policy or principle in the guise of statutory interpretation.

[53] There can never be an issue of policy herein as the State Government had allowed the release of the bumiputera units and as such the payments made is legitimate and clearly within the law. In *Director-General of Inland Revenue v LTS* [1974] 1 MLJ 187; [1985] MTC 166 Chang Min Tat J observed as follows:

But as was said in the Privy Council in the judgment of their Lordships in *Minister of Finance v Smith* [1927] AC 193 at p 197:

> There is nothing in the Act which points to any intention to curtail the statutory definition of income, and it does not appear appropriate under the circumstances to import any assumed moral or ethical standard, as controlling in a case such as this and the literal interpretation of the language employed.

The statutory definition of chargeable income within the Act is the gross income adjusted to allow for such deductions as are properly allowed by the Act.

[54] On the issue of penalty, the courts have stated that the discretion to impose penalty is not unfettered and must be exercise properly and reasonably. Penalties should not be imposed mechanically or automatically (see *Ketua Pengarah Hasil Dalam Negeri v Kim Thye & Co* [1992] 2 MLJ 708; [1992] 1 CLJ Rep 135, and *BN Ketua Pengarah Hasil Dalam Negeri* [2009] MSTC 3, 828).

[55] The appellant has submitted that it has at all material times acted in good faith, gave full co-operation, made full and frank disclosure, and obtained professional advice in managing its finance and tax affairs. Throughout the course of the audit, the appellant states that it had provided the respondent with all documents and information requested. The appellant had also explained to the respondent the specific circumstances surrounding the release and the payment in its letters dated 8 and 20 July 2016.

[56] It is of the considered view that the appellant had acted in good faith and made full disclosure. In *Ketua Pengarah Hasil Dalam Negeri v Firgos (Malaysia) Sdn Bhd* [2014] 1 MLJ 701; [2014] 8 CLJ 943, Zaleha Yusof J (as Her Ladyship then was) stated as follows:

> [17] On the second issue, even the appellant's witness agreed that all the capital expenditures claimed for reinvestment allowance purposes were actually incurred by the respondent. During the cross-examination, he agreed that the respondent had made full disclosure in the Borang that were submitted in the Years of Assessment 2005–2007 and agreed that the audit team did not discover anything contrary to the information disclosed in the Borang. I therefore agree with the SCIT that the respondent had acted in good faith and made full disclosure. In *Ketua Pengarah Hasil Dalam Negeri v Kim Thye & Co* [1992] 2 MLJ 708; [1992] 4 CLJ 2079; [1992] 1 CLJ Rep 135 it was highlighted that s 113(2) of the ITA is not a mandatory provision. This section clearly confers discretion on the appellant as to whether penalty should be imposed or not. What more the matter in dispute arose as a result of technical adjustment ie, due to a differing interpretation of the tax legislation by the respondent. Therefore, the decision of the SCIT in the second issue to my mind is also correct.

[57] This is not a case where the taxpayer had filed an incorrect return by omitting or understating its income or gave incorrect information relating matter affecting its chargeability to tax. The appellant had taken reasonable and genuine position in submitting its returns. It is of the considered view that the respondent would have known the deduction as the appellant had filed its tax returns and it cannot be gainsaid that the deduction was only known after the audit was carried out on the appellant.

CONCLUSION

[58] The decision of the SCIT cannot be sustained as it is wrong in law in light of the clear statutory provisions that supports the fact that the payment is deductible. There are merits in this appeal and the same is allowed and the decision of the SCIT, reversed.

Appeal allowed; decision of SCIT reversed.

Reported by Dzulqarnain Ab Fatar